IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Appln. No. 937 of 2005

Afjal S/o late Gulam Jahan
R/o Village Dhandhera,
P.S. Kotwali Roorkee, Distt. Haridwar
…… Applicant

Versus

1. State of Uttaranchal
2. Shri Kailash Panwar
S.H.O. Kotwali Roorkee,
District Haridwar. ……. Respondents

Mr. Lok Pal Singh, Advocate for the Applicant.
Mr. H.C. Pandey, Asstt. Govt. Advocate for the State.

Hon. Prafulla C. Pant, J.

This is a petition moved under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the charge sheet in criminal case No. 223 of 2005 registered at P.S. Kotwali Roorkee, District Haridwar.

2. Heard learned counsel for the parties.

3. The F.I.R. of the aforesaid crime shows that the Police Officers got information that two persons namely, Devendra Rana and Yudhister were preventing the voters from casting the votes in the election, which was being held on 08.10.2005. On this information, the police party reached at the spot where it found that along with Devendra Rana, Yudhister and three other persons Ashok Rana, Furkan, Afjal and some other persons were shouting slogans and on seeing the police party, they started hurling

abuse at them the accused applicant Furkan Exhorted others to fire, on which Devender Rana fired at the police party. A case crime No. 299 of 2005 was registered under Section 147, 148, 149, 307, 336, 504 of the I.P.C. and under Section 7 of Crime Law Amendment Act. After investigation, a charge sheet was filed against the five accused namely, Devender Rana, Yudhister, Ashok Rana, Furkan and Afjal. The Magistrate has already taken cognizance on the charge sheet.

4. Learned counsel for the applicant argued that there is no independent witness named in the charge sheet and the applicant has falsely been implicated in the crime. In the opinion of this Court, on that ground alone the charge sheet cannot be quashed. My attention was also drawn on behalf of the applicant to the principle of law contained in ***Pepsi Food Vs. Special Judicial Magistrate reported in 1998 (5) S.C.C. 749,*** and it is argued that the Magistrate must apply its mind before taking cognizance of a crime. In the opinion of this Court, said case law does not help the applicant in this case for the reasons, that the above mentioned referred case was a complaint case, and apart from this it is not clear in the present case if the Magistrate has not perused the record before summoning the accused after the charge sheet was file against them.

5. In the circumstances, the petition under Section 482 of the Code of Criminal Procedure is liable to be dismissed. The same is dismissed. However, it is directed that if, after his surrender before the court, the applicant seeks bail, the

application in this regard shall be heard by the Magistrate without any unreasonable delay.

(Prafulla C. Pant, J.)

Dt. 19th December, 2005.
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